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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE NM

MAY 08 2000

PAUL SCOTT ROBINSON,

Plaintiff,

ROBERT M. MARCH
CLERK

v.

No. CIV-00-0494 MV/LCS

CITY OF CLOVIS,

Defendant.

MEMORANDUM OPINION AND
FINAL ORDER OF DISMISSAL

This matter is before the Court *sua sponte* to review Plaintiff's criminal complaint against Defendant City of Clovis, New Mexico. Plaintiff is incarcerated and appears pro se. He did not submit a filing fee or move for leave to proceed *in forma pauperis* ("IFP"). In his civil rights action against the same Defendant, *Robinson v. City of Clovis*, CIV-99-1342 BB/LFG, Plaintiff's IFP motion was granted, and he has not yet been required to make a partial payment. The failure to pay a filing fee will be construed as a request for leave to proceed IFP, and the request will be granted. For the reasons below, Plaintiff's complaint will be dismissed.

The Court has the discretion to dismiss an *in forma pauperis* complaint *sua sponte* under §1915(e)(2) "at any time if . . . the action . . . is frivolous or malicious; [or] fails to state a claim upon which relief may be granted." The Court may also dismiss a complaint *sua sponte* under Fed.R.Civ.P. 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991) (quoting *McKinney v. Oklahoma Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). In reviewing Plaintiff's pro se


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complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but is mindful that the complaint must be liberally construed. *Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

Regardless of the merits of the complaint's allegations, "courts universally endorse the principle that private citizens cannot prosecute criminal actions," *Higgins v. Neal*, No. 94-1154, 1995 WL 216920, at **1 (10th Cir. 1995), and, therefore, "[Plaintiff] lacks standing to maintain this criminal action." *Id.* "That is not to say that [Plaintiff's] allegations, if true, must go unprosecuted. [Plaintiff] may refer his complaint to the United States Attorney's Office." *Id.* at **1 n.3. The complaint will be dismissed.

IT IS THEREFORE ORDERED that Plaintiff's implied request for leave to proceed *in forma pauperis* is GRANTED;

IT IS FURTHER ORDERED that Plaintiff's criminal complaint is DISMISSED without prejudice, and this proceeding is DISMISSED.


UNITED STATES DISTRICT JUDGE